



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 5213-99

24 February 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 15 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 16 February 1956 at age 18. The record shows that while in recruit training you made a statement admitting to homosexual acts both before and during your service in the Marine Corps. Your statement reveals that you were discovered committing a homosexual in the barracks head by a drill instructor at about 0500. Based on your admission you were processed for an administrative discharge. On 29 March 1956 the discharge authority approved the recommendation of your commanding officer that you be discharged for unfitness with an undesirable discharge. You were so discharged on 6 April 1956.

Your case was considered by the Navy Discharge Review Board (NDRB) in 1958. At that time you contended that you and your friend made up the story about being homosexual so that you could get out of recruit training.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth, limited education and low score on the aptitude test. The Board found that these factors and contentions were not sufficient to warrant

recharacterization of your discharge. The Board was aware that current regulations allow for a discharge under other than honorable conditions of individuals discharged for homosexual conduct if certain aggravating factors are present. In your case you were seen committing of a homosexual act in a barracks. Accordingly, this act could be viewed as having been committed "openly and in public view". Under current standards this is an aggravating factor which may result in discharge under other than honorable conditions. In addition, the Board noted your contention before the NDRB that you lied about the homosexual acts in order to be discharged. The Board was aware that it is well settled in the law that an individual who commits a fraud in order to be discharged should not benefit from that fraud when it is discovered.

The Board concluded that, whichever version is correct, the characterization of your discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director